

KEWEENAW BAY INDIAN COMMUNITY

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May 8, 2012

Dr. Susan Hedman, Regional Administrator
U.S. Environmental Protection Agency Region 5
77 W. Jackson Boulevard (R-193)
Chicago, Illinois 60604

MAY 14 2012

Re: Request for Government-to-Government Consultation

Dear Dr. Hedman:

We are writing to request to conduct government-to-government consultation with the U.S. Environmental Protection Agency (EPA) in accordance with Executive Order 13175. Specifically, we are requesting to meet with you and your legal and technical advisors to discuss a number of issues related to Rio Tinto's Eagle mine and Humboldt mill. These issues include matters that have a direct effect on our treaty protected tribal trust resources. They include the status of EPA's rulemaking on the establishment of proper financial responsibility assurances at hard rock mines. We also wish to discuss in detail EPA's involvement in the promulgation (drafting) of Michigan's Part 632, Non-Ferrous Metals Mining Law (Part 632). Additionally we seek to understand EPA's actions and decisions on regulating the Rio Tinto Eagle mine and the Humboldt mill and are prepared to offer substantial recommendations for EPA to consider a regulatory framework that we believe may have been overlooked by all parties. We also intend to discuss the State of Michigan's actions related to discharging its authorities under the Clean Water Act that were delegated by EPA and the ongoing permitting efforts of a haul road to support the Eagle mine.

To assist you in preparing for meaningful consultation we would like to share some background information. As you may be aware, the Keweenaw Bay Indian Community (KBIC) has expended considerable precious resources challenging the State of Michigan's permitting of Rio Tinto's Eagle mine under the Part 632. This effort included a 42-day administrative hearing under Part 632 process at considerable expense for the tribe and the others who contested the State's actions. This hearing resulted in a recommendation by the presiding official that Rio Tinto locate its mine portal away from Eagle Rock (Migisi Wa Sin). We felt that preserving Migisi Wa Sin and the ability to worship there was worth every aspect of the struggle. However, despite the lone finding of the administrative law judge presiding over these proceedings by which we and our co-plaintiffs prevailed, State of Michigan officials ignored this recommendation altogether. Now, as the final aspects of the construction of the Eagle mine are being completed, there is a giant tunnel penetrating Migisi Wa Sin. At present, Ojibwe people are prevented from using this sacred place in any meaningful way. We don't know if we will ever be able to benefit from this

LAKE SUPERIOR BAND OF CHIPPEWA INDIANS

"Home of the Midnight Two-Step Championship"

sacred place again. We think that these circumstances serve as ample testimony of how the Part 632 process has failed. But we are only at the very beginning of testing Part 632 and we desperately need EPA's assistance to, at a minimum, make sure that the very concerns EPA expressed when Part 632 was in development are addressed in full measure now before it's too late. It is our understanding that EPA wrote to the State of Michigan during the drafting of the Part 632 regulations to inform the State that Part 632 measures fell short of acquiring adequate financial responsibility assurances. We agree and would submit that this aspect of the process needs to be addressed either through amending Part 632 or expedited completion of EPA's rulemaking specifically addressing financial responsibility assurances at hard rock mines. We cannot accept the possibility of injury to treaty protected tribal trust resources without the clear and reliable ability to restore our natural resources. At our meeting, we would hope that EPA is prepared to discuss all of the recommendations that it made to the State of Michigan related to its development of Part 632.

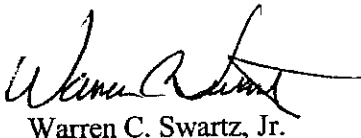
For approximately 4 years (2006 – 2010), EPA Region 5 officials communicated with Rio Tinto and conducted other communication, including holding public meetings, regarding the requirement to obtain an Underground Injection Control (UIC) permit for the discharges of mine water and other water sources from a Treated Water Infiltration System (TWIS) which EPA considered to be a Class V underground injection well. Rio Tinto intends to use the TWIS for disposal of up to 504,000 gallons per day of treated industrial process wastewater from mining operations. As originally designed, EPA maintained that the system qualified as a Class V underground injection well. EPA initiated communication with Rio Tinto regarding this requirement as early as March 2006. EPA received a permit application for construction and operation of this system in 2007. While EPA was completing its review of the technical aspects of this system, Rio Tinto, by then doing business as Kennecott Eagle Mining Company (KEMC), withdrew its application for a UIC permit for the original design of this system in March 2010. As we described in our April 6, 2010 letter to EPA, the redesign was rudimentary in that it involved replacing the cover over the discharge pipes with Styrofoam instead of an earthen mound (dirt). EPA determined that the redesigned TWIS does not need a UIC permit on July 1, 2010. In reviewing the documentation the EPA has made publically available regarding this effort, we note that on numerous occasions it was clearly pointed out that the discharges from the TWIS will "vent" to the surface and flow into the East Branch of the Salmon Trout River. Moreover, the State of Michigan's groundwater permit and associated amendments clearly describe that these discharges will flow into the Salmon Trout River. In fact, by every estimation made, including those by Rio Tinto's experts, the discharges from the TWIS will flow into the Salmon Trout River which of course flows into Lake Superior. We believe the TWIS and its array of 5 discharge pipes and associated outfall works are a "discrete conveyance" that clearly constitute a point source discharge to waters of the United States that should be subjected to the provisions of the Clean Water Act. We wish to discuss in detail specifically how EPA first became aware of the proposed TWIS, concluded that it was appropriately regulated by the Safe Drinking Water Act UIC provisions and ultimately came to the conclusion that no further regulation by EPA was required. We also would like to explain the significance of the Salmon Trout River and Lake Superior to our culture.

Finally, we are extremely troubled by the unethical conflicts of interest that have occurred during the permitting of the Eagle mine and Humboldt mill. State of Michigan employees who had a

direct role in reviewing Rio Tinto's permits, managing the public process associated with permitting, advocating for their approval and even defending them in litigation are now on Rio Tinto's payroll and working at the Eagle mine. In fact, they are managing the environmental program. These State employees were directly involved in the very Clean Water Act program that EPA has delegated to the State of Michigan and used to issue the NPDES permit for the Humboldt mill. We would point out that this situation is directly related to selecting any appropriate remedy of the aforementioned discharges of industrial process water. Recently, Mr. Adam Burley, the senior Rio Tinto official responsible for the Eagle mine, wrote KBIC regarding his concerns related to his desire to foster trust by KBIC and the surrounding communities. Mr. Burley also said he is concerned by a lack of communication from EPA after it assisted with the inspection of their exploration activities within the exterior boundaries of the L'Anse Indian Reservation. We want to work with EPA to address these trust issues and we believe it should start by ensuring that regulation of all Rio Tinto operations is completely consistent with Federal law.

In conclusion, we would like to let you know that we are very thankful for the many programs that EPA has provided to KBIC. This assistance is essential to our ability to engage in meaningful government-to-government consultation on these matters where complex, conflicting and competing interests prevail. As an initial step in honoring our request, please provide a point of contact so that we may arrange a mutually acceptable date, time and location for the government-to-government consultation.

Sincerely,

A handwritten signature in black ink, appearing to read "Warren C. Swartz, Jr.", with a stylized, cursive script.

Warren C. Swartz, Jr.